

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JONATHAN & YULIYA SCHARF

v.

BOARD OF ASSESSORS OF THE
TOWN OF NEEDHAM

Docket No. F326594

Promulgated:
June 21, 2017

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Needham ("assessors" or "appellee"), to abate a tax on certain real estate in the Town of Needham, owned by and assessed to Jonathan & Yuliya Scharf ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2015 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined her in the decision for the appellants.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Jonathan Scharf, pro se, for the appellants.

Chip Davis, Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2014, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 0.23-acre parcel of real estate improved with a single-family residence located at 16 Savoy Road in the Town of Needham ("subject property"). For assessment purposes, the subject property is identified as "Parcel ID 199-025.0-0045-0000.0."

For the fiscal year at issue, the assessors valued the subject property at \$1,203,100 and assessed a tax thereon, at the rate of \$11.29 per thousand, in the total amount of \$13,583.¹ On December 29, 2014, Needham's Collector of Taxes sent out the town's actual real estate tax bills for fiscal year 2015. In accordance with G. L. c. 59, § 57C, the appellants timely paid the tax due without incurring interest. On Wednesday, February 4, 2015, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors,² which they

¹ This figure does not include the Community Preservation Act ("CPA") surcharge in the amount of \$249.08.

² For the fiscal year at issue, the due date for payment of the first installment of the actual tax bill without incurring interest, and therefore, the due date of abatement applications, was February 6, 2015. See St. 2015, c. 10, § 62 (extending the due dates for fiscal year 2015 due to a severe blizzard on the initial due date).

denied on March 30, 2015. On May 28, 2015, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed an appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction over the instant appeal.

The subject property is improved with a two-story, Colonial-style residence ("subject dwelling"). Built in 2003, the subject dwelling has approximately 3,400 square feet of finished area with a total of eight rooms, including four bedrooms, as well as two full bathrooms and one half bathroom. Additional amenities include: an attached, two-car garage; one fireplace; central air-conditioning; and, a partially finished basement. The property record card rated the grade and condition of the dwelling as "excellent."

In support of their contention that the subject property was overvalued for the fiscal year at issue, the appellants presented the testimony of Mr. Scharf, and also a comparable-sales and comparable-assessment analysis of fourteen purportedly comparable properties located in Needham, which is summarized in the following table.

Address	Living Area (sf)	Finished Bsmt. (sf)	Sale Date	Sale Price	Assessed Value
Subject Property	3,408	827			\$1,203,100
70 Birds Hill Avenue	3,869	1,200	10/09/2013	\$1,138,000	\$1,076,300
94 Arch Street	4,907	1,270	N/A	N/A	\$1,333,500
172 Valley Road	4,677	1,300	11/08/2012	\$1,225,000	\$1,310,300
98 Highgate Road	3,791	1,550	3/28/2013	\$1,125,000	\$1,176,300
202 Valley Road	3,582	1,140	12/12/2013	\$1,005,000	\$1,073,100
5 Rae Avenue	4,359	831	N/A	N/A	\$1,183,200
60 Savoy Road	3,800	630	N/A	N/A	\$1,011,100
76 Edwardel Road	4,321	0	N/A	N/A	\$ 991,700
15 Woodledge Road	3,014	1,081	N/A	N/A	\$ 946,300
74 Thornton Road	3,249	1,200	7/14/2013	\$1,026,000	\$1,031,700
142 Grosvenor Road	4,466	900	6/17/2013	\$1,180,000	\$1,273,200
158 Parker Road	4,220	480	4/11/2013	\$1,095,000	\$1,150,600
23 Rybury Hillway	3,728	1,020	8/23/2012	\$1,040,000	\$1,166,900

The assessors presented their case-in-chief through the testimony of Chip Davis, the Director of Assessing for Needham, and the introduction of several exhibits, including the requisite jurisdictional documentation and the property record cards for four purportedly comparable properties that sold in May and June of 2013. Relevant information for these sales is contained in the following table:

Address	Living Area (sf)	Sale Date	Sale Price	Assessed Value
6 Peacedale Road	3,685	6/21/2013	\$1,185,000	\$1,157,600
73 Thornton Road	3,505	6/14/2013	\$1,299,000	\$1,210,300
82 Edwardel Road	3,355	6/28/2013	\$1,299,000	\$1,204,700
95 Falcon Street	3,774	5/30/2013	\$1,253,000	\$1,243,700

Mr. Davis asserted that these sales demonstrated that Needham's assessed values of properties were slightly below their fair cash values.

Based on all of the evidence presented, the Board found that the subject property was overvalued for the fiscal year at issue.

In reaching this decision, the Board found most comparable and placed the most weight on the sale of 98 Highgate Street, a Colonial-style dwelling built in 2000 with a living area of 3,791 and a finished basement area of 1,550. Despite its larger size, this property sold on March 28, 2013 for \$1,125,000, less than the subject property's fiscal year 2015 assessed value. The Board also placed weight on the property located at 60 Savoy Road, on the same street as the subject property, and the property located at 5 Rae Road, only one street over from the subject property. Despite the fact that both of these properties have substantially more finished living area than the subject property, with similar finished basement areas, both were assessed for less than the subject property for the fiscal year at issue.

Based primarily on these properties, as well as its consideration of the other properties in evidence, the Board concluded that the fair market value of the subject property for the fiscal year at issue was \$1,150,000, \$53,100 lower than its assessed value. Accordingly, the Board decided this appeal for the appellants and granted an abatement in the amount of \$611.49, inclusive of the appropriate portion of the CPA surcharge.

OPINION

The assessors are required to assess real estate at its fair cash value as of the first day of January preceding the start of

the fiscal year. G.L. c. 59, §§ 2A and 38. Fair cash value, which is synonymous with fair market value, is defined as the price at which a willing seller and a willing buyer in a free and open market will agree if both parties are fully informed and under no compulsion. **Boston Gas Co. v. Assessors of Boston**, 334 Mass. 549, 566 (1956).

The appellants have the burden of proving that the subject property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245).

In appeals before the Board, taxpayers "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation.'" **General Electric Co.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain

probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008).

While "[o]rdinarily, reliable comparable sales data will trump comparable assessment information for purposes of determining the fair cash value of property," the provisions of G.L. c. 58A, § 12B permit a party to introduce "'evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class.'" **Igoe v. Assessors of Mattapoisett**, Mass. ATB Findings of Fact and Reports 2014-827, 830-31 (quoting G.L. c. 58A, § 12B). See also **Thatai v. Assessors of Lexington**, Mass. ATB Findings of Fact and Reports 2015-172, 179 (citation omitted) ("[E]vidence of assessed values must relate to properties that are comparable to the subject property, i.e., properties that share 'fundamental similarities' with the subject property, including similar age, location, and size.").

In the present appeal, the Board found most comparable and placed the most weight on the sale of 98 Highgate Street, a similar-style property to the subject property, but with greater living and finished basement areas. It sold on March 28, 2013 for \$1,125,000, less than the subject property's fiscal year 2015 assessed value. The Board also placed weight on the properties

located at 60 Savoy Road, on the same street as the subject property, and 5 Rae Road, only one street over from the subject property. Despite the fact that both of these properties have substantially more finished living area than the subject property, with similar finished basement areas, both were assessed for less than the subject property for the fiscal year at issue.

The Board need not specify the exact manner in which it arrived at its valuation. *Jordan Marsh Co. v. Assessors of Malden*, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 72 (1941). In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. *General Electric Co.*, 393 Mass. at 605. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

Based on all the evidence, the Board found and ruled that the fair cash value of the subject property for the fiscal year at issue was \$1,150,000, \$53,100 lower than its assessed value. Accordingly, the Board decided this appeal for the appellants and granted an abatement in the amount of \$611.49.

THE APPELLATE TAX BOARD

By: 

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 

Clerk of the Board

Asst.